

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 484

SPONSOR: Senator Peaden

SUBJECT: Health Care

DATE: March 8, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Wilson	HE	<b>Pre-meeting</b>
2.			CJ	
3.			HA	
4.				
5.				
6.				

## I. Summary:

The bill revises chapter 400, part IV, F.S., which governs home health agencies, nurse registries, companion services, and homemaker services. The bill revises nurse supervision requirements by eliminating required monthly nurse visits to patients receiving home health aide or certified nursing assistant (CNA) services from nurse registries and requires payment for optional nurse supervisory visits to patients receiving non-skilled services from home health agencies. The bill also permits advanced registered nurse practitioners (ARNPs) and physician assistants, working for physicians, to give orders for skilled care to be provided by home health agencies and nurse registries as is permitted in other health care settings. Home health agency and nurse registry licenses will be issued for a two-year period, instead of one year, with commensurate fee increases in keeping with the longer time period. The bill increases fines and penalties for operating an unlicensed home health agency or nurse registry, which should provide greater authority to the Agency for Health Care Administration (AHCA) and state attorneys to limit such activity. The bill requires AHCA to accept accrediting organization surveys, in lieu of conducting its own licensure surveys of home health agencies, under specified conditions.

This bill amends ss. 400.461, 400.462, 400.464, 400.471, 400.487, 400.491, 400.494, 400.506, 400.512, and 400.515, F.S.

## II. Present Situation:

### Home Health Agencies

Pt. IV of ch. 400, F.S., governs home health agencies, which are defined in s. 400.462(8), F.S., as organizations that provide home health services and staffing services. Home health agencies provide nursing care; physical, speech, occupational, respiratory and IV therapy; home health

aide services; homemaker and companion services; home medical equipment; nutritional guidance; and medical social services in the patient's home or place of residence.

There are 1,283 licensed home health agencies in Florida as of December 18, 2004. From July 1, 2003, through June 30, 2004, 241 applications were processed for new home health agencies. Telephone inquiries are received daily from persons interested in starting new home health agencies. Licenses are issued for a one-year period.

The requirements for applications for an initial license are specified in the statutes and include proof of financial ability to operate with projected income and expense statements. The current law in s. 400.471(3), F.S., only requires that a certified public accountant (CPA) sign the financial statements submitted. Insurance is also a requirement for licensure. Section 400.471(5), F.S., specifies that proof of both liability and malpractice insurance, in an amount not less than \$250,000 per claim be submitted.

Renewal applications are currently due at least 90 days prior to expiration of the license and applications for licenses are due 60 days prior to changing the ownership of an agency. AHCA has fining authority in the statutes under s. 400.474(2)(a), F.S., and the state home health agency rules at 59A-8.003(2), F.A.C., require a late fine of \$50 per day not to exceed a maximum of \$2,500 if the renewal and change of ownership applications are not received by the due date. The renewal applications contain an update of information on the owners and officers, personnel, insurance, and home health services from the prior year's application.

Section 400.487(2), F.S., requires treatment orders to be signed by the attending physician of a patient who is to receive skilled care within 30 days after the start of care. Most orders are received by telephone from the physician's office and home health agencies report difficulty in obtaining signed orders from physicians within 30 days. Medicare home health agency regulations and policy at 42 CFR Part 484 and the Medicare Home Health Agency Manual (CMS Publication 11) do not have a specific time frame and only require that physicians' orders be signed prior to billing for services.

Nursing supervisory visits are optional for patients receiving home health aide and CNA services and can only be provided when approved by the patient according to s. 400.487(3), F.S.

AHCA currently permits the exemption of accredited home health agencies from licensure surveys in its state rules at 59A-8.003(3), F.A.C, provided the home health agency requests the exemption and provides a survey report from the accrediting organization that shows the home health agency is in compliance with state licensing requirements. As of December 27, 2004, 62 of the 209 accredited home health agencies are exempt from the state licensure survey. The accredited home health agencies comprise 16.3% of the total home health agencies licensed.

### **Nurse Registries**

Nurse registries arrange for nurses, CNAs, home health aides, homemakers, or companions to provide services to patients in their homes. There were 2,128 licensed nurse registries in Florida as of December 18, 2004. A nurse registry is a business that offers contracts for registered nurses, licensed practical nurses, home health aides, CNAs, homemakers, and companions.

These persons work as independent contractors and provide services to patients in their homes or private duty and staffing services in health care facilities. Licenses are issued for a one-year period.

Persons who receive care from a home health aide or a CNA must have a physician and the physician must be notified within 48 hours after the contract for care is completed. A registered nurse must make a monthly visit to each patient who receives services from a home health aide or a CNA to assess the quality of care provided as required in s. 400.506(10), F.S. The home health agency statutes do not require this same amount of supervision for similar care.

### **Unlicensed Activity**

For the period July 1, 2003, through June 30, 2004, AHCA received 28 complaints of unlicensed home health agencies, four complaints of unlicensed nurse registries, and 10 complaints of unregistered homemaker or companion services. Businesses found to be providing services without a license or registration are given a notice of violation and are directed to obtain a license. Some disregard the notices and continue operating. The existing laws in ch. 400, pt. IV, F.S., do not provide AHCA with sufficient enforcement authority to require the businesses either to get licensed or to cease operation. AHCA may seek an injunction in s. 400.515, F.S., only when there is an emergency affecting the immediate health and safety of a patient.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 400.461, F.S., to add nurse registries to the list of providers that must be licensed under pt. IV of ch. 400, F.S. The chapter already requires the licensure of nurse registries; this amendment to the statement of the purpose of the chapter is a technical change.

**Section 2.** Amends s. 400.462, F.S., to modify and add definitions. The new definitions are as follows:

*Admission* means a decision by a home health agency, during or after an evaluation visit to the patient's home, that the patient's medical, nursing, and social needs for skilled care can be addressed by the agency in the patient's place of residence.

*Advanced registered nurse practitioner* means a person licensed in Florida to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003, F.S.

*Direct employee* means an employee for whom one of the following entities pays withholding taxes: a home health agency; a management company that has a contract to manage the home health agency on a day-to-day basis; or an employee leasing company that has a contract with the home health agency to handle the payroll and payroll taxes for the home health agency.

*Physician assistant* means a person who is a graduate of an approved program or its equivalent, or meets standards approved by the boards, and is licensed to perform medical services delegated by the supervising physician, as defined in s. 458.347, F.S., or s. 459.022, F.S.

The definition of *companion* or *sitter* is modified to replace “cares for” with “spends time with,” so that companions or sitters would not be authorized to provide any care to their clients. The definition of *director of nursing* is modified to delete the requirement that a director of nursing designate, in writing, for each licensed entity, a qualified alternate registered nurse to serve during the absence of the director of nursing. The definition of *home health aide* is modified to mean a person “who is trained or qualified as provided by rule”. The definition of *staffing services* is modified to add that staffing services may be provided anywhere within the state.

**Section 3.** Amends s. 400.464, F.S., to provide for a 2-year home health agency license, instead of the current 1-year license. The penalty for unlicensed activities is increased from a second-degree misdemeanor to a third-degree felony. The bill establishes a fine of \$500 for a second or subsequent offense of operating without a home health agency license. Unlicensed activity is declared a nuisance, inimical to the public health, welfare and safety. AHCA and the state attorneys are permitted to bring action for an injunction to stop unlicensed activity.

**Section 4.** Amends s. 400.471, F.S., to modify the information an applicant for a home health agency license must file by requiring that all documents demonstrating the applicant’s financial ability to operate must be compiled by, rather than signed by, a certified public accountant. Applicants for renewal of a license will be required to complete questions concerning volume data on the renewal application. AHCA may deny or revoke a license if the applicant has falsely represented a material fact or has omitted a material fact from the application. The bill changes the due date for receipt of applications for renewal of licenses from 90 days to 60 days prior to expiration of the license.

The bill authorizes AHCA to levy an administration fine of \$50 per day up to a maximum amount of \$500 for a late-filed application. In lieu of its own periodic licensure survey, AHCA must accept the survey of an AHCA-recognized accrediting agency, provided the home health agency’s accreditation is not provisional and the home health agency authorizes the release of, and AHCA receives, the agency’s accreditation report. The bill requires an application fee that may not exceed \$2,000 (currently \$1,000).

**Section 5.** Amends s. 400.487, F.S., to specify that the sources of payment for home health services include Medicaid, Medicare, private insurance, personal funds, or a combination thereof. A physician’s assistant or an advanced registered nurse practitioner may establish and sign treatment orders for skilled services. The bill deletes the requirement that the treatment orders must be reviewed within 30 days of the start of care. The requirement that a registered nurse must perform a supervisory visit to the home of a patient receiving home health aide services is amended to require that the visit be conducted in accordance with the patient’s agreement to pay the charge for the visit.

**Section 6.** Amends s. 400.491, F.S., to require a licensed home health agency that ceases to remain in business, to notify each patient, whose clinical records it has in its possession, of the fact that it is ceasing operations and give each patient 15 calendar days to retrieve his or her clinical record at a specified location within 2 hours’ driving time of the patient’s residence and, at a minimum, between the hours of 10 a.m. and 3 p.m., Monday through Friday. The bill deletes the designation of home health agency records of patients who receive skilled care as “patient records, under s. 456.057, F.S.” and instead designates the records as patient records under

s. 400.494, F.S., which provides a public records exemption for information about patients of a home health agency. The bill increases from 5 years to 6 the period during which a home health agency must maintain records for patient who receives skilled care. The bill deletes the requirement that a home health agency must keep a service provision plan on clients who receive non-skilled care.

**Section 7.** Amends s. 400.494, F.S., to require that patient information be disclosed only as authorized under the provisions of 45 C.F.R. ss. 160.102, 160.103, and 164, subpart A, the federal Health Information Portability and Accountability Act (HIPAA), except that clinical records regarding HIV testing, sexually transmissible diseases, cholesterol health risks, cancer, tuberculosis, mental health, trauma, substance abuse, and genetic testing described in ss. 381.004, 384.29, 385.202, 392.65, 394.4615, 395.404, 397.501, and 760.40, F.S., respectively, must be disclosed as authorized in those sections. The bill deletes subsection (2) which states that this section does not apply to information lawfully requested by the Medicaid Fraud Control Unit of the Department of Legal Affairs.

**Section 8.** Amends s. 400.506, F.S., to increase the licensure fee for nurse registries from a maximum of \$1,000 to a maximum of \$2,000 and to extend the licensure period from 1 year to 2 years. AHCA must assess a fine of not less than \$100 against a licensee that fails to include the nurse registry's license number in any advertisement in print or broadcast media. The fine for second and subsequent offenses is \$500.

Unlicensed advertisement or activity as a nurse registry is a third-degree felony punishable by a term of imprisonment not exceeding 5 years, or a fine of no more than \$5,000. A habitual felony offender would be subject to an extended term of imprisonment not to exceed 10 years. Each day of continuing violation is a separate offense. Businesses are given 10 days to cease operation and apply for a license after notification from AHCA. Businesses may also be fined \$500 per day for failure to cease operation after notification by AHCA.

The bill deletes the requirement for monthly supervisory visits by an RN to nurse registry patients receiving services from a certified nursing assistant or a home health aide, and instead requires a nurse registry to advise a patient, patient's family, or a person acting on behalf of the patient of the availability of registered nurses to make visits to the patient's home at an additional cost. The bill provides that employees who have been continuously employed since October 1, 2000 may not be required to undergo criminal background screening. The bill deletes "September 30, 1990", the current date by which an employee must have been employed in order to be exempt from background screening.

Language incorporating the ability of physician assistants and advanced registered nurse practitioners to write treatment orders has been added to this section as was done for home health agencies in section 5 of the bill.

**Section 9.** Amends s. 400.512, F.S., to change to "October 1, 2000" the date by which employees of a home health agency, nurse registry, or homemaker or companion service must have been employed in order to be exempt from requirements for background screening. The bill deletes "October 1, 1994", the current date, specified in this section, by which those employees must have been employed in order to be exempt from background screening.

**Section 10.** Amends s. 400.515, F.S., to give AHCA authority to institute injunction proceedings in a court of competent jurisdiction to restrain or prevent the establishment or operation of a home health agency or nurse registry that does not have a license or that is in violation of any provision of pt. IV of ch. 400, F.S.

**Section 11.** Provides an effective date of July 1, 2005.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

The bill doubles the maximum licensing fees for home health agencies and nurse registries and also doubles the time period for the license, from one to two years. Thus, there is no increase in costs per year for licensing of home health agencies and nurse registries.

**B. Private Sector Impact:**

Home health agencies and nurse registries will only have to submit applications for license renewal every two years.

**C. Government Sector Impact:**

Sections 3 and 8 of the bill increase the licensure time period for home health agencies and nurse registries and also increase the licensing fees based on the longer time periods. Section 4 adds application changes and will reduce the number of licensing surveys by a small percentage. Home health agency applications continue to increase each year. ACHA anticipates that proposed changes can be absorbed within existing resources.

Under current statutes, licenses expire one year from the date of the issuance and are renewed throughout the year. The bill will continue to have license expiration dates based

on the date of issuance; the bill only changes the time frame for the length of the license to two years. Thus, since the license fees and licensure periods are doubled and the receipt of the renewals will continue to be staggered based on the date of issuance, there should be no depletion of the Health Care Trust Fund.

There is no reduction in the amount of the licensing fee for those accredited home health agencies that are exempt from surveys in Section 4 of the bill. AHCA will still investigate complaints at these exempt agencies and will continue to conduct the Medicare and Medicaid recertification surveys at most of these agencies. Thus, there will be no negative fiscal impact.

Section 4 of the bill requires additional data to be collected in renewal applications. While this will add to staff time needed to review and compile the data, along with the continued growth in home health agency applicants, the cost will be offset by the reduction in staff time required to renew licenses biennially instead of annually.

## **VI. Technical Deficiencies:**

On page 4, line 19, in the definition *for certified nursing assistant*, the bill adds “home health aide” as if to make home health aides subject to the training requirements for certified nursing assistants. A technical amendment to delete “home health aide” on page 4, line 19, and a second amendment to add training requirements in the definition of home health aide on page 6, line 30, would clarify this requirement for training of home health aides.

On page 24, line 15, after “nurse registry.” A technical amendment should strike “The assessment” and insert: “A record of the nurse’s visit”. The bill removes the requirement for an assessment and replaces it with the requirement that a nurse must be available to make visits.

## **VII. Related Issues:**

On page 4, line 8, after “residence.”, AHCA recommends inserting: Admission includes completion of an agreement with the patient or the patient’s legal representative to provide home health services as required in s. 400.487(1).

According to AHCA, the definition of “admission” should be revised because it only covers the home health agency’s decision process to accept the patient and does not include the responsibility to provide the care as agreed to with the patient. Current state law at s. 400.487(1), F.S., requires that the home health agency have a written agreement with the patient or his/her legal representative to provide services. According to AHCA, this agreement should be considered to be part of the admission process and should be included in the definition as well.

On page 11, lines 13 through 15, AHCA recommends restoring the deleted language to current law. The sentences would then read as currently in the statute: “A listing of services to be provided, either directly by the applicant or through contractual arrangements with existing providers.”

According to AHCA, information on whether services are provided directly or through contractors is needed to review the financial projections and determine financial ability to operate, as required in s. 400.471(2)(c) and (3), F.S. Also, the contractor information is needed to assure that an application is not approved where the provider relies on unlicensed contractors or the use of contractors that do not have a license for the specific geographic service area.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

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